



September 3, 2024

Dr. Dick Pelley
10 East Washington #4
Athens, TN 37303

RE: **Claim Number:** LIX61646-1
Insured: City of Athens
Matter: City of Athens vs Adolphus "Dick" Pelley
Venue/Docket: Circuit Court for McMinn County (24-cv-304)
Claims Made Date: 8/20/2024

Dear Dr. Pelley:

Public Entity Partners is in receipt of the Petition for Ouster and Application for Immediate Suspension of Municipal Position on Athens City Council filed in the McMinn County Circuit Court. Your demand for defense counsel, that was emailed to Jim Morrison at Public Entity Claims, was forwarded to my attention. Your email did not contain a copy of the Writ of Ouster, however, we obtained a copy from the Court.

A thorough review of the policy has been completed, and it has been determined that there is no coverage for this action.

The policy under which this claim is being reported, PLI-0044-24, with effective dates of 12/31/2023 to 12/31/2024, is subject to certain terms, conditions, exclusions and definitions. Coverage is not applicable for this matter as the policy does not provide coverage for ouster suits or ouster proceedings.

Please refer to the policy language below:

SECTION II – EXCLUSIONS

With respect to exclusions qualified with 'alleged' wording, all coverage is excluded, including investigation, defense and judgments. For other exclusions, PE Partners will investigate and defend allegations until a point at which it is determined, by the judgment of PE Partners, that the exclusion 'actually' applies, at which point all coverage will cease.

This coverage does not apply to Bodily Injury, Property Damage, Personal Injury, or any claim for Damages, or any claim under the Non-Monetary Defense Coverage;

38. Arising out of actual or alleged ouster suit or proceeding, including any proceeding to remove someone from any office or prevent anyone from taking office, or any appeal or action seeking to nullify any previous action.

In addition to the above, the following policy exclusions could also apply:

1. Resulting from an intentional wrongful act, error, or omission on your part or on the part of any covered party. This exclusion does not apply to bodily injury or property damage resulting from the use of reasonable force to protect persons or property, pursuant to the

constitution of the United States, federal law, or the constitution or laws of the State of Tennessee. This exclusion does not apply to bodily injury or property damage resulting from an intentional act if an error was made in the selection of the intended subject or location of the act.

23. *Arising out of any act, error, or omission by you or your employees, volunteers, agents or any covered party that is outside the scope of employment or official duties.*
24. Arising out of the willful violation of a statute or ordinance, including federal, state, or local laws committed with your knowledge or consent.

In the alternative, should it be determined that your actions did fall within the scope of your official duties, the following policy exclusion would apply:

40. *Arising out of action taken by any covered party against another covered party. This exclusion does not apply to claims by your employee(s) under Employee Benefits/Fiduciary Liability coverage.*

Due to the above, we must respectfully decline coverage and your request for defense counsel for this matter. If this action is amended or re-filed in any form, please forward a copy to my attention for further coverage review and consideration.

If you disagree with this decision, you may address the decision in accordance with Section VII – Conditions, item 13 – Dispute Resolution, on page 27 of the current policy.

SECTION VII – CONDITIONS

13. DISPUTE RESOLUTION

If you, a covered party, or PE Partners disagree on a matter relating to a claim against you or a covered party under this policy, the dispute will be resolved exclusively through arbitration, not through litigation. PE Partners may also institute arbitration proceedings at any time. Arbitration must be instituted by you or a covered party within ninety (90) days of any dispute with PE Partners.

If a demand for arbitration is made, each party will select an arbitrator within thirty (30) days. The two arbitrators will select a competent and disinterested third arbitrator within thirty (30) days. An arbitrator may be an employee of an insured of PE Partners or any other person, provided the other person is not an employee of a governmental entity that is not an insured of PE Partners. Only the arbitrator appointed by you may be an employee of a governmental entity located in the same county in which you are located. Pre-arbitration discovery is limited to 20 interrogatories, including subparts.

PE Partners will pay the expense of our arbitrator, and you will pay the expense of your arbitrator. PE Partners and you will bear equally the other expenses of the arbitration, including expenses of the third arbitrator. Unless both parties agree otherwise, arbitration will take place in Nashville, Tennessee. A decision agreed to in writing by any two of the arbitrators will be binding.

No parties other than covered parties may participate in dispute resolutions without the express written approval of PE Partners. Failure to institute arbitration and select arbitrators in the prescribed time frames above will constitute a waiver of any or all claims or other disputes regarding coverage issues by you or a covered party.

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There may be other limitations, conditions or exclusions under Public Entity Partners policy, at law or in equity, that may apply to this suit. We specifically reserve the right to raise, at a later date, any such limits, conditions or exclusions that may apply.

Please contact me if you have any questions.

Sincerely,

Bill Wright
By [Signature]

Bill Wright
Claim Coordination Supervisor
1-800-979-6159
BWright@pepartners.org

BW:tli

CC: Chris Caldwell, Esq.
404 N. Jackson Street
Athens, TN 37371

Nina Edmonds, Risk Manager
City of Athens
815 N. Jackson Street
Athens, TN 37303

Jim Morrison, Director of Claims (via email)
Public Entity Partners

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